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10 *behalf of Zogenix*

11 [Additional Counsel on Signature Page]

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13 ROY LUI, derivatively on behalf of ZOGENIX,
14 INC.,

15 Plaintiff,

16 v.

17 STEPHEN J. FARR, MICHAEL P. SMITH,
18 LOUIS C. BOCK, JAMES B. BREITMEYER,
19 CAM L. GARNER, ROGER L. HAWLEY,
20 ERLE T. MAST, RENEE P. TANNENBAUM,
21 and MARK WIGGINS,

22 Defendants,

23 and

24 ZOGENIX, INC.,

25 Nominal Defendant.

Case No.: 3:20-CV-390-WHO

**STIPULATION AND [PROPOSED]
ORDER OF VOLUNTARY DISMISSAL
UNDER FEDERAL RULE OF CIVIL
PROCEDURE 41**

1 Plaintiff Roy Lui ("Plaintiff"), Defendants Stephen J. Farr, Michael P. Smith,
2 Louis C. Bock, James D. Breitmeyer, Cam. L. Garner, Roger L. Hawley, Erle T. Mast, Renee P.
3 Tannenbaum and Mark Wiggins, and Nominal Defendant Zogenix, Inc., and hereby stipulate as
4 follows:

5 WHEREAS, the above-captioned action was filed on January 17, 2020;

6 WHEREAS, the above-captioned action is a shareholder derivative action
7 alleging breaches of fiduciary duty based on, *inter alia*, the filing of a federal securities fraud
8 class action lawsuit against Zogenix, Stephen Farr and Michael Smith, captioned *Lake v.*
9 *Zogenix, Inc., et. al.*, filed in the United States District Court for the Northern District of
10 California, Case No. 19-cv-01975-RS ("Securities Action");

11 WHEREAS, on January 27, 2020, the Court in the Securities Action granted the
12 defendants' motion to dismiss with leave to amend;

13 WHEREAS, on February 13, 2020, the lead plaintiff in the Securities Action
14 decided not to amend but rather to voluntarily dismiss their complaint;

15 WHEREAS, Plaintiff wishes to dismiss this action pursuant to the terms of this
16 Stipulation;

17 WHEREAS, no compensation or consideration has been or will be paid to
18 Plaintiff, and no agreements or promises have been made other than what is expressly reflected
19 in this Stipulation;

20 THEREFORE, the parties hereby stipulate and respectfully request that:

- 21 1. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Parties jointly
22 stipulate to the voluntary dismissal of the Action;
 - 23 2. The Action shall be dismissed without prejudice;
 - 24 3. Each Party shall be responsible for his, her or its own costs or fees associated with
25 the Action.
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1 Dated: March 23, 2020

THE ROSEN LAW FIRM, P.A.

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11 *Attorneys for Plaintiff Roy Lui*

12
13 Dated: March 23, 2020

LATHAM & WATKINS, LLP.

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15 By: /s/Colleen C. Smith
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19 *Attorneys for Defendants Stephen J. Farr,*
Michael P. Smith, Louis C. Bock, James D.
20 *Breitmeyer, Cam. L. Garner, Roger L. Hawley,*
Erle T. Mast, Renee P. Tannenbaum and Mark
21 *Wiggins, and Nominal Defendant Zogenix, Inc.*

22 * * *

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24 Pursuant to Civil Local Rule 5-1(i)(3), all signatories concur in the filing of this
25 stipulation.

26 Dated: March 23, 2020

/s/Laurence M. Rosen
Laurence M. Rosen

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PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: _____

The Honorable William H. Orrick
United States District Court Judge